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11 Attorneys for Defendants, CITY OF SAN JOSE,  
12 ROBERT DAVIS, SHAWN ROCHA, ERIC KURZ,  
13 CHRIS HARDIN, and CHRIS CRUZADO

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 NATASHA BURTON, an individual,

18 Plaintiff,

19 v.

20 CITY OF SAN JOSE; ROBERT DAVIS in  
21 his capacity as CHIEF OF POLICE OF  
22 THE CITY OF SAN JOSE; OFFICER  
23 SHAWN ROCHA; OFFICER ERIC KURZ;  
24 OFFICER CHRIS HARDIN; OFFICER  
25 CHRIS CRUZADO; and DOES 1  
26 THROUGH 75, individually and in their  
27 official capacities as employees of the  
28 CITY OF SAN JOSE and the SAN JOSE  
POLICE DEPARTMENT; and DOES 76-  
100 individually, inclusive,

Defendants.

Case Number: C08-01215 HRL

**DEFENDANTS' ANSWER TO  
COMPLAINT**

**JURY TRIAL DEMANDED**

Defendants, City of San Jose, Robert Davis, Shawn Rocha, Eric Kurz, Chris Hardin  
and Chris Cruzado, hereby respond to the Complaint of Plaintiff Natasha Burton in the  
above-entitled matter as follows:

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1           1)     Answering Paragraph 1 of Plaintiff's Complaint, Defendants lack sufficient  
2 information and belief, and therefore, deny the allegations contained therein.

3           2)     Answering Paragraph 2 of Plaintiff's Complaint, Defendants lack sufficient  
4 information and belief, and therefore, deny the allegations contained therein.

5           3)     Answering Paragraph 3 of Plaintiff's Complaint, Defendants lack sufficient  
6 information and belief, and therefore, deny the allegations contained therein.

7           4)     Answering Paragraph 4 of Plaintiff's Complaint, Defendants lack sufficient  
8 information and belief, and therefore, deny the allegations contained therein.

9           5)     Answering Paragraph 5 of Plaintiff's Complaint, Defendants lack sufficient  
10 information and belief, and therefore, deny the allegations contained therein.

11          6)     Answering Paragraph 6 of Plaintiff's Complaint, Defendants admit the  
12 allegations contained therein.

13          7)     Answering Paragraph 7 of Plaintiff's Complaint, Defendants admit that  
14 Robert Davis is the Chief of Police for the City of San Jose. Defendants deny the  
15 remaining allegations contained in Paragraph 7.

16          8)     Answering Paragraph 8 of Plaintiff's Complaint, Defendants admit the  
17 allegations contained therein.

18          9)     Answering Paragraph 9 of Plaintiff's Complaint, Defendants admit the  
19 allegations contained therein.

20          10)    Answering Paragraph 10 of Plaintiff's Complaint, Defendants admit the  
21 allegations contained therein.

22          11)    Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit the  
23 allegations contained therein.

24          12)    Answering Paragraph 12 of Plaintiff's Complaint, Defendants admit the  
25 allegations contained therein.

26          13)    Answering Paragraph 13 of Plaintiff's Complaint, Defendants admit the  
27 allegations contained therein.

28        /////

1           14)    Answering Paragraph 14 of Plaintiff's Complaint, Defendants admit the  
2 allegations contained therein.

3           15)    Answering Paragraph 15 of Plaintiff's Complaint, Defendants lack sufficient  
4 information and belief, and therefore, deny the allegations contained therein.

5           16)    Answering Paragraph 16 of Plaintiff's Complaint, Defendants lack sufficient  
6 information and belief, and therefore, deny the allegations contained therein.

7           17)    Answering Paragraph 17 of Plaintiff's Complaint, Defendants lack sufficient  
8 information and belief, and therefore, deny the allegations contained therein.

9           18)    Answering Paragraph 18 of Plaintiff's Complaint, Defendants lack sufficient  
10 information and belief, and therefore, deny the allegations contained therein.

11          19)    Answering Paragraph 19 of Plaintiff's Complaint, Defendants lack sufficient  
12 information and belief, and therefore, deny the allegations contained therein.

13          20)    Answering Paragraph 20 of Plaintiff's Complaint, Defendants lack sufficient  
14 information and belief, and therefore, deny the allegations contained therein.

15          21)    Answering Paragraph 21 of Plaintiff's Complaint, Defendants lack sufficient  
16 information and belief, and therefore, deny the allegations contained therein.

17          22)    Answering Paragraph 22 of Plaintiff's Complaint, Defendants lack sufficient  
18 information and belief, and therefore, deny the allegations contained therein.

19          23)    Answering Paragraph 23 of Plaintiff's Complaint, Defendants lack sufficient  
20 information and belief, and therefore, deny the allegations contained therein.

21          24)    Answering Paragraph 24 of Plaintiff's Complaint, Defendants lack sufficient  
22 information and belief, and therefore, deny the allegations contained therein.

23          25)    Answering Paragraph 25 of Plaintiff's Complaint, Defendants lack sufficient  
24 information and belief, and therefore, deny the allegations contained therein.

25          26)    Answering Paragraph 26 of Plaintiff's Complaint, Defendants lack sufficient  
26 information and belief, and therefore, deny the allegations contained therein with the  
27 exception of the allegation that Officer Rocha "began to use obscenities and told Ms.  
28 Burton to move 'fucking faster.'" Defendants deny that allegation.

1           27)    Answering Paragraph 27 of Plaintiff's Complaint, Defendants deny the  
2 allegations contained therein.

3           28)    Answering Paragraph 28 of Plaintiff's Complaint, Defendants deny the  
4 allegations contained therein.

5           29)    Answering Paragraph 29 of Plaintiff's Complaint, Defendants deny the  
6 allegations contained therein.

7           30)    Answering Paragraph 30 of Plaintiff's Complaint, Defendants deny the  
8 allegations contained therein.

9           31)    Answering Paragraph 31 of Plaintiff's Complaint, Defendants deny the  
10 allegations contained therein.

11          32)    Answering Paragraph 32 of Plaintiff's Complaint, Defendants deny the  
12 allegations contained therein.

13          33)    Answering Paragraph 33 of Plaintiff's Complaint, Defendants deny the  
14 allegations contained therein.

15          34)    Answering Paragraph 34 of Plaintiff's Complaint, Defendants deny the  
16 allegations contained therein.

17          35)    Answering Paragraph 35 of Plaintiff's Complaint, Defendants deny the  
18 allegations contained therein.

19          36)    Answering Paragraph 36 of Plaintiff's Complaint, Defendants deny the  
20 allegations contained therein.

21          37)    Answering Paragraph 37 of Plaintiff's Complaint, Defendants deny the  
22 allegations contained therein.

23          38)    Answering Paragraph 38 of Plaintiff's Complaint, Defendants deny the  
24 allegations contained therein.

25          39)    Answering Paragraph 39 of Plaintiff's Complaint, Defendants deny the  
26 allegations contained therein.

27          40)    Answering Paragraph 40 of Plaintiff's Complaint, Defendants deny the  
28 allegations contained therein.

1           41)    Answering Paragraph 41 of Plaintiff's Complaint, Defendants deny the  
2   allegations contained therein.

3           42)    Answering Paragraph 42 of Plaintiff's Complaint, Defendants deny the  
4   allegations contained therein.

5           43)    Answering Paragraph 43 of Plaintiff's Complaint, Defendants deny the  
6   allegations contained therein.

7           44)    Answering Paragraph 44 of Plaintiff's Complaint, Defendants deny the  
8   allegations contained therein.

9           45)    Answering Paragraph 45 of Plaintiff's Complaint, Defendants lack sufficient  
10   information and belief, and therefore, deny the allegations contained therein.

11          46)    Answering Paragraph 46 of Plaintiff's Complaint, Defendants lack sufficient  
12   information and belief, and therefore, deny the allegations contained therein.

13          47)    Answering Paragraph 47 of Plaintiff's Complaint, Defendants lack sufficient  
14   information and belief, and therefore, deny the allegations contained therein.

15          48)    Answering Paragraph 48 of Plaintiff's Complaint, Defendants lack sufficient  
16   information and belief, and therefore, deny the allegations contained therein.

17          49)    Answering Paragraph 49 of Plaintiff's Complaint, Defendants lack sufficient  
18   information and belief, and therefore, deny the allegations contained therein.

19          50)    Answering Paragraph 50 of Plaintiff's Complaint, Defendants lack sufficient  
20   information and belief, and therefore, deny the allegations contained therein.

21          51)    Answering Paragraph 51 of Plaintiff's Complaint, Defendants lack sufficient  
22   information and belief, and therefore, deny the allegations contained therein.

23          52)    Answering Paragraph 52 of Plaintiff's Complaint, Defendants incorporate  
24   their answers to Paragraphs 1 through 51 as if fully set forth herein.

25          53)    Answering Paragraph 53 of Plaintiff's Complaint, Defendants deny the  
26   allegations contained therein.

27          54)    Answering Paragraph 54 of Plaintiff's Complaint, Defendants deny the  
28   allegations contained therein.

1           55)    Answering Paragraph 55 of Plaintiff's Complaint, Defendants deny the  
2 allegations contained therein.

3           56)    Answering Paragraph 56 of Plaintiff's Complaint, Defendants deny the  
4 allegations contained therein.

5           57)    Answering Paragraph 57 of Plaintiff's Complaint, Defendants deny the  
6 allegations contained therein.

7           58)    Answering Paragraph 58 of Plaintiff's Complaint, Defendants incorporate  
8 their answers to Paragraphs 1 through 57 as if fully set forth herein.

9           59)    Answering Paragraph 59 of Plaintiff's Complaint, Defendants deny the  
10 allegations contained therein.

11          60)    Answering Paragraph 60 of Plaintiff's Complaint, Defendants deny the  
12 allegations contained therein.

13          61)    Answering Paragraph 61 of Plaintiff's Complaint, Defendants deny the  
14 allegations contained therein.

15          62)    Answering Paragraph 62 of Plaintiff's Complaint, Defendants deny the  
16 allegations contained therein.

17          63)    Answering Paragraph 63 of Plaintiff's Complaint, Defendants incorporate  
18 their answers to Paragraphs 1 through 62 as if fully set forth herein.

19          64)    Answering Paragraph 64 of Plaintiff's Complaint, Defendants deny the  
20 allegations contained therein.

21          65)    Answering Paragraph 65 of Plaintiff's Complaint, Defendants deny the  
22 allegations contained therein.

23          66)    Answering Paragraph 66 of Plaintiff's Complaint, Defendants deny the  
24 allegations contained therein.

25          67)    Answering Paragraph 67 of Plaintiff's Complaint, Defendants deny the  
26 allegations contained therein.

27          68)    Answering Paragraph 68 of Plaintiff's Complaint, Defendants deny the  
28 allegations contained therein.

69) Answering Paragraph 69 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

### **FIRST AFFIRMATIVE DEFENSE**

1. As and for a first affirmative defense, Defendants allege that the Complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

2. As and for a second affirmative defense, Defendants allege that Plaintiff was careless and negligent in and about the matters referred to in the Complaint, and further that Plaintiff failed to exercise ordinary care for Plaintiff's own safety and such carelessness and negligence on the part of Plaintiff proximately caused and contributed to the damage, detriment, or injury sustained by Plaintiff, if any, and that Plaintiff's recovery should therefore be barred or reduced to the extent of Plaintiff's negligence.

### **THIRD AFFIRMATIVE DEFENSE**

3. As and for a third affirmative defense, Defendants allege that any harm Plaintiff suffered was the result of a negligent or otherwise wrongful act and/or conduct of persons other than these Defendants and that the conduct of other persons other than these Defendants was the sole and proximate cause of the injuries and damages alleged by Plaintiff.

### **FOURTH AFFIRMATIVE DEFENSE**

4. As and for a fourth affirmative defense, Defendants allege that all actions taken were undertaken in good faith and with reasonable belief that the actions were valid, necessary, constitutionally proper, and objectively reasonable for a police officer in the same circumstances, entitling Defendants to the Qualified Immunity of Good Faith.

### **FIFTH AFFIRMATIVE DEFENSE**

5. As and for a fifth affirmative defense, Defendants allege that they are immune from the state law causes of action pursuant to Government Code §§800-1000, including but not limited to §§820.2 820.4, 820.8, 821.6, 821.8, and 822.2.

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**SIXTH AFFIRMATIVE DEFENSE**

6. As and for a sixth affirmative defense, Defendants allege that Plaintiff's Complaint is barred in that Plaintiff failed to comply with the claims filing provision of Government Code §900, *et. seq.*

**SEVENTH AFFIRMATIVE DEFENSE**

7. As and for a seventh affirmative defense, Defendants allege that Plaintiff's Complaint is barred by the applicable statutes of limitation.

**EIGHTH AFFIRMATIVE DEFENSE**

8. As and for an eighth affirmative defense, Defendants allege that Plaintiff has failed to mitigate her damages, if any.

**NINTH AFFIRMATIVE DEFENSE**

9. As and for a ninth affirmative defense, Defendants allege that if Plaintiff was detained, these answering Defendants had probable cause to detain Plaintiff based upon the Defendants investigation, knowledge, and observations preceding the detention and that the Plaintiff was validly detained.

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1 WHEREFORE, Defendants pray:

2 1. That Plaintiff take nothing by her Complaint;

3 2. That Plaintiff's Complaint be dismissed with prejudice;

4 3. That Defendants be awarded their costs of suit, including attorneys fees  
5 incurred herein; and

6 4. For such other and further relief as the Court deems proper.

7  
8 Respectfully submitted,

9 Dated: August 19, 2008

RICHARD DOYLE, City Attorney

10  
11 By:                     /S/                      
12 MICHAEL J. DODSON  
Sr. Deputy City Attorney

13 Attorneys for Defendants,  
14 CITY OF SAN JOSE, ROBERT DAVIS,  
SHAWN ROCHA, ERIC KURZ, CHRIS  
15 HARDIN, and CHRIS CRUZADO

16 **REQUEST FOR JURY TRIAL**

17 Defendants City of San Jose, Robert Davis, Shawn Rocha, Eric Kurz, Chris Hardin  
18 and Chris Cruzado, hereby request a jury trial in this action.

19  
20 Dated: August 19, 2008

Respectfully submitted,

21 RICHARD DOYLE, City Attorney

22  
23 By:                     /S/                      
24 MICHAEL J. DODSON  
Sr. Deputy City Attorney

25 Attorney for Defendants,  
26 CITY OF SAN JOSE, ROBERT DAVIS,  
SHAWN ROCHA, ERIC KURZ, CHRIS  
27 HARDIN, and CHRIS CRUZADO